

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

WILLIAM S. FREIS, Individually and as
Personal Representative of the ESTATE
OF LYNETTE M. FREIS, Deceased,

Plaintiff,

v.

WAL-MART STORES, INC., BUNZL
DISTRIBUTION, and HILEX POLY CO,
LLC,

Defendants.

CASE NO. _____

NOTICE OF REMOVAL

~~Defendant Wal-Mart Stores, Inc. ("Wal-Mart") hereby gives notice of the removal~~
of the above-captioned action from the District Court of Sarpy County, Nebraska, Case
No. 13-347, to the United States District Court for the District of Nebraska. In support of
this notice, Defendant states as follows:

1. This action is being removed to Federal Court based upon diversity of citizenship jurisdiction.
2. Plaintiff filed the above-captioned civil action on February 28, 2013, in the District Court of Sarpy County, Nebraska. Wal-Mart was served with the Complaint on July 25, 2013, and therefore has timely removed this case. This action is wholly civil in nature; the United States District Court for the District of Nebraska has original jurisdiction under 28 U.S.C. § 1332; and the action may be removed by Defendant pursuant to 28 U.S.C. § 1441.
3. This Court has diversity of citizenship jurisdiction over the action because the controversy is between citizens of different states and the matter in controversy

exceeds \$75,000.00 exclusive of interest and costs. Plaintiff is a citizen of Nebraska, while all Defendants are incorporated in and have their principal places of business in states other than Nebraska.

4. Specifically, Plaintiff alleges that "Plaintiff is a resident of Cass County, Nebraska..." (Exhibit A, Complaint ¶1). Accordingly, Plaintiff is a citizen of Nebraska. Defendant Wal-Mart Stores, Inc., has its principal place of business in Bentonville, Arkansas and is a Delaware Corporation; therefore it is a citizen of a state other than Nebraska. (Exhibit 1, authenticated by Exhibit C, Affidavit of Gutttau-Fox ¶2). Defendant Bunzl Distribution USA, Inc., d/b/a Bunzl Distribution, is a Delaware corporation with its principal place of business in Missouri (Exhibit 2, authenticated by Exhibit C, Affidavit of Gutttau-Fox ¶3). Defendant Hilex Poly Co., LLC is a Delaware corporation with its principal place of business in South Carolina. (Exhibit 3, authenticated by Exhibit C, Affidavit of Gutttau-Fox ¶4).

5. Defendants Bunzl Distribution and Hilex Poly Co, LLC have authorized counsel for Wal-Mart to formally represent to the Court that both Defendants consent to and join in this removal.

6. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. Plaintiff's Complaint alleges that the Defendants are liable to Plaintiff for more than \$650,000 in medical expenses alone. (Exhibit A, Complaint ¶17(a), 23(a), 31(a), 36(a), and 41(a)). Plaintiff seeks judgment "... against the Defendants and each of them, jointly and severally, for all general and special damages as set forth in the previous paragraphs and for their costs herein expended, including: (a) Medical expenses in the amount of \$656,716.01; (b) Pain and suffering; (c) Loss of enjoyment of life; (d) Funeral

and burial expenses; and (e) All wrongful death damages, including, but not limited to, the loss of support, care, companionship and society of Lynette Freis.” (Complaint). Accordingly, the amount in controversy exceeds \$75,000, exclusive of interests and costs. 28 U.S.C. § 1446(c)(2)(A).

7. This Notice of Removal is being filed pursuant to 28 U.S.C. § 1446 within thirty days of service of the Petition on or about July 25, 2013.

8. Wal-Mart expressly reserves all defenses to Plaintiff’s claims, including, but not limited to, all defenses based in law, equity, statute, constitution, jurisdiction, or immunity, any other defense or avoidance, and does not waive any defense by this removal.

9. Attached as Exhibit “A” and incorporated by reference is a true and correct copy of the state court pleadings served upon Defendant and removed by this notice.

10. Attached as Exhibit “B” is a true and correct copy of the Notice of Filing of Notice of Removal which has been served with this document on all parties and will be filed with the District Court of Sarpy County, Nebraska.

11. Attached as Exhibit “C” is the Affidavit of Heidi A. Guttan-Fox with Exhibits 1, 2, and 3, corporation documentation, attached thereto.

12. Attached as Exhibit “D” is a true and correct copy of all filings known to Defendant in the District Court of Sarpy County, Nebraska. To Defendant’s knowledge, no other pleadings or papers have been filed with such court.

13. Defendant requests trial of this matter in Omaha, Nebraska.

WHEREFORE, Wal-Mart notifies the Court of the removal of this action from the District Court of Sarpy County, Nebraska to the United States District Court for the

District of Nebraska with the consent and joinder of the remaining Defendants.

Dated this 24th day of August 2013.

WAL-MART STORES, INC., Defendant.

By: s/Heidi A. Guttau-Fox

George E. Martin III (NE# 21747)

Heidi A. Guttau-Fox (NE# 21570)

Ryan D. Wilkins (NE# 24622)

BAIRD HOLM LLP

1700 Farnam St, Ste 1500

Omaha, NE 68102-2068

Phone: 402-344-0500

Facsimile: 402-344-0588

E-mail: gmartin@bairdholm.com

E-mail: hguttau-fox@bairdholm.com

E-mail: rwilkins@bairdholm.com

ATTORNEYS FOR WAL-MART

CERTIFICATE OF SERVICE

I hereby certify that on August 24th, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Sean Minahan
Gage R. Cobb
Brian Nolan
Kathryn Hartnett
William Sende

and I hereby certify that I have mailed by United States Postal Service, postage prepaid, this document to the following non CM/ECF participants:

None.

s/Heidi A. Guttau-Fox

DOCS/1201535.1